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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/044,682

Applicant(s)

SCHMIDT ET AL.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other:  |

## **Detailed Action**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology in particular the word "means". Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: on page 11 line 1 reference numeral "27" should be - -17- -.

On page 11 line 1 reference numeral "6" should be - -16- -.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 and 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claims 1-13 and 17-20 depend from rejected claim 1 and include all of the limitations of claim 1 thereby rendering these dependent claims indefinite.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what axis the second drive disc is on.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what axis the central toothed wheel is rotatable about.

Claims 14, 16, 18, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of these claims states the distance between the

Art Unit: 3643

accommodation spaces is different from each end. It is unclear how the distance between the spaces can be different. The spaces are not stated as being movable and therefore as the claim is worded it appears the distance between the spaces remains constant and thus cannot be different.

Claims 15-16 depend from rejected claim 14 and include all of the limitations of claim 14 thereby rendering these dependent claims indefinite.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 12, 14, and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipate by U.S. Patent No. 4,791,704 to Chapman.

Referring to claim 1, Chapman discloses an apparatus for transferring poultry carcasses from a first overhead conveyor – 2 to a second overhead conveyor – 20, in which the overhead conveyors – 2 and 20 the carcasses are transported suspended from shackles – 13 – see column 3 lines 10-20, comprising a transfer wheel – 6 rotatable about a vertical axis - 9 and positioned between both overhead conveyors – 2 and 20, which wheel – 6 is provided with holders for the carcasses – see column 3 lines 54-68 and column 4 lines 1-62, and with first means for transferring the carcasses – see for example column 3 lines 35-53 from the first overhead conveyor – 20 and with second means for transferring the carcasses – see for example column 5

lines 10-35 from the transfer wheel – 6 to the second overhead conveyor – 20, orientation means – see for example 3 and 14, further being present for equalizing the special orientation of the carcass in the holder at receipt on the transfer wheel – 6 – see columns 3-4 and the spatial final orientation of the carcass in the holder at its discharge from the transfer wheel – 6 – see columns 4-5.

Referring to claim 2, Chapman discloses the orientation mean being adapted for keeping the spatial orientation of the carcass in the holder constant during the transport on the transfer wheel – 6 – see for example figures 1-2 and columns 3-4.

Referring to claim 3, Chapman discloses the holders being bearing mounted in the transfer wheel – 6 to be rotatable about themselves about a vertical axis – see for example figures 3-5 and columns 3-4.

Referring to claim 4, Chapman discloses the orientation means being adapted for relative rotation of the holders with respect to the transfer wheel – 6 – see for example figures 3-5 and columns 3-4.

Referring to claim 12, Chapman discloses an apparatus for transferring poultry carcasses from a first overhead conveyor – 2 to a second overhead conveyor – 20, in which overhead conveyors – 2 and 20 the carcasses are transported suspended from shackles – 13 – see column 3 lines 10-20, comprising a transfer wheel – 6 rotatable about a vertical axis - 9 and positioned between both overhead conveyors – 2 and 20, which wheel – 6 is provided with holders for the carcasses – see column 3 lines 54-68 and column 4 lines 1-62, and with first means for transferring the carcasses – see for example column 3 lines 35-53 from the first overhead conveyor – 20 and with second means for transferring the carcasses – see for example column 5

lines 10-35 from the transfer wheel – 6 to the second overhead conveyor – 20, orientation means – see for example 3 and 14, further being present for rotating the holders with respect to the transfer wheel – 6 during transport of the holders by the transfer wheel – 6 – see columns 3-4.

Referring to claim 14, Chapman discloses a holder for suspended transport of a poultry carcass provided with accommodation spaces for the legs of the carcass, the accommodation spaces each forming a continuous slit in the horizontal direction, the distance between the accommodation spaces at their one end being different from the distance therebetween at their other end – see for example figure 5 which shows the holders and their accommodation spaces closer together at the right side of the drawing and further apart on the left side.

Referring to claims 17 and 19, Chapman discloses the holders being provided with accommodation spaces for the legs of the carcass, the accommodation spaces each forming a continuous horizontal slit – see for example figure 5.

Referring to claims 18 and 20, Chapman discloses in the holders the distance between the accommodation spaces at their one end being different from the distance therebetween at their other end – see for example figure 5, which shows the holders and their accommodation spaces closer together at the right side of the drawing and further apart on the left side.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3643

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman as applied to claims 1 and 12 above, and further in view of U.S. Patent No. 6,033,299 to Stone et al.

Referring to claims 5 and 13, Chapman does not disclose the orientation means being adapted for letting the holders rotate 1:1 with the transfer wheel. Stone et al. does disclose the orientation means being adapted for letting the holders rotate 1:1 with the transfer wheel – 70 - see for example column 3 lines 50-67 and column 4 lines 1-18. Therefore it would have been obvious to one of ordinary skill in the art to take the poultry transfer apparatus of Chapman and add the holders rotating 1:1 with the transfer wheel of Stone et al., so as to allow for the transfer wheel and holders to be driven by the same power means without any gearing or other components thus making the device cheaper to build and operate.

Referring to claim 6, Chapman further discloses the orientation means comprising first orientation means for orienting a first of the holders and second orientation means for orienting others of the holders – see for example columns 3-5. Chapman does not disclose the second orientation means are operated by the first orientation means. Stone et al. does disclose the second orientation means are operated by the first orientation means – see for example – 74 and columns 3-4.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman as modified by Stone et al. as applied to claim 6 above, and further in view of U.S. Patent No. 5,453,045 to Hobbel et al.



Referring to claim 7, Chapman as modified by Stone et al. does not disclose the orientation means comprising a first driving disc provided on the first holder, a second driving disc placed loosely on the axis but retained in spatial orientation and a driving belt or driving chain running circumferentially about both. Hobbel et al. does disclose the orientation means comprising a first driving disc – 19 provided on the first holder - 17, a second driving disc – 16 placed loosely on the axis but retained in spatial orientation and a driving belt or driving chain running circumferentially about both – see for example figures 1-2 and columns 4-6. Therefore it would have been obvious to one of ordinary skill in the art to take the poultry transfer apparatus of Chapman as modified by Stone et al. and add the driving discs and chain connected to the first holder of Hobbel et al., so as to provide an efficient means to drive the first holder so as to allow for easy transfer of the poultry carcass.

Referring to claim 8, Chapman as modified by Stone et al. does not disclose the diameter of both driving discs being equal. Hobbel et al. does disclose the diameter of both driving discs – 16 and 19 being equal – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the poultry transfer apparatus of Chapman as modified by Stone et al. and add the diameter of both driving discs being equal of Hobbel et al., so as to have as many uniform components on the device as possible so as to make the manufacturing easier and less expensive.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman as modified by Stone et al. and Hobbel et al. as applied to claim 7 above, and further in view of U.S. Patent No. 5,344,360 to Hazenbroek. Chapman as modified by Stone et al. and Hobbel et al. does not disclose a tension pulley for driving the belt or chain. Hazenbroek does disclose a

tension pulley for driving the belt or chain – see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the poultry transfer device of Chapman as modified by Stone et al. and Hobbel et al. and add the tension pulley of Hazenbroek, so as to ensure the poultry carcasses are properly and effectively conveyed from one conveyor to another without any loss in speed in the conveyors or transfer apparatus.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman as modified by Stone et al. as applied to claim 6 above, and further in view of U.S. Application Publication No. 2002/0031998 to Kerstholt.

Referring to claim 10, Chapman as modified by Stone et al. does not disclose the second orientation means comprising a first toothed wheel that is attached to the first holder in a rotatably fixed manner, a central toothed wheel freely rotatable on the axis and driven by the first toothed wheel, as well as second toothed wheels attached in a rotatably fixed manner to every other holder, which second toothed wheels are in driving engagement with the central toothed wheel. Kerstholt does disclose the second orientation means comprising a first toothed wheel – 41' that is attached to the first holder - 35 in a rotatably fixed manner, a central toothed wheel – 42' freely rotatable on the axis and driven by the first toothed wheel, as well as second toothed wheels – 41' attached in a rotatably fixed manner to every other holder – 35, which second toothed wheels are in driving engagement with the central toothed wheel – see for example figure 6 and page 3 paragraphs 46-48. Therefore it would have been obvious to one of ordinary skill in the art to take the poultry transfer apparatus of Chapman as modified by Stone et al. and add the toothed wheels on the holder of Kerstholt, so as to drive the rotatable holder with the same drive means as the conveyor drive means.

Referring to claim 11, Chapman as modified by Stone et al. does not disclose the second toothed wheels having a diameter that is equal to the one of the first toothed wheel. Kerstholt does disclose the second toothed wheels – 41' having a diameter that is equal to the one of the first toothed wheel – 41' – see figure 6. Therefore it would have been obvious to one of ordinary skill in the art to take the poultry transfer apparatus of Chapman as modified by Stone et al. and add the first and second toothed wheels having the same diameter of Kerstholt, so as to have as many uniform components in the apparatus as possible to make manufacturing quicker and easier.

Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman as applied to claim 14 above, and further in view of U.S. Patent No. 4,597,133 to van de Nieuwelaar.

Referring to claim 15, Chapman does not disclose inclined turned end members being arranged on either side of one end of the accommodation spaces to prevent unintentional backwards movement of the legs. Van de Nieuwelaar does disclose inclined turned end members being arranged on either side of one end of the accommodation spaces to prevent unintentional backwards movement of the legs – see for example figures 2a-2c. Therefore it would have been obvious to one of ordinary skill in the art to take the holder of Chapman and add the inclined end members of van de Nieuwelaar, so as to firmly hold the poultry carcass on the conveyor so that it can be conveyed quickly and have the necessary processing functions performed quickly and easily.

Referring to claim 16, Chapman further discloses the distance between the accommodation spaces being larger at the one end than at the other end – see for example figure

5. Chapman does not disclose inclined turned end members being arranged on either side of the one end of the accommodation spaces to prevent unintentional backwards movement of the legs out of the one end. Van de Nieuwelaar does disclose inclined turned end members being arranged on either side of the one end of the accommodation spaces to prevent unintentional backwards movement of the legs out of the one end – see for example figures 2a-2c. Therefore it would have been obvious to one of ordinary skill in the art to take the holder of Chapman and add the inclined end members of van de Nieuwelaar, so as to firmly hold the poultry carcass on the conveyor so that it can be conveyed quickly and have the necessary processing functions performed quickly and easily.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to transfer conveyors in general:

U.S. Pat. No. 4,071,924 to Meyn – shows orientation means

U.S. Pat. No. 4,574,428 to Meyn – shows holder with inclined member

U.S. Pat. No. 4,660,256 to Innes et al. – shows toothed wheels and chains

U.S. Pat. No. 4,675,943 to Tabata – shows transfer wheel

U.S. Pat. No. 4,756,056 to Innes et al. – shows toothed wheels and drive chains

U.S. Pat. No. 5,125,498 to Meyn – shows transfer wheel

U.S. Pat. No. 5,340,351 to Minderman et al. – shows holder with drive disc

U.S. Pat. No. 5,672,098 to Veraart – shows conveyors, holder and transfer wheel

EP Pat. No. 225306 to Bowen – shows transfer wheel and holders


EP Pat. No. 235106 to Chapman – shows conveyors, holders and transfer wheel

EP Pat. No. 259920 to Brakels et al. – shows holders and transfer wheel

EP Pat. No. 357843 to Tieleman et al. – shows holders with drive discs

10. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

  
THOMAS PRICE  
GAU: 3643  
PRIMARY EXAMINER